IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2953 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LAXMANBHAI B PRAJAPATI

Versus

A M C

Appearance:

MR. Manoj Shrimali for Mr. GIRISH PATEL
for Petitioner.
MR MG NAGARKAR for Respondent No. 1
MR BP TANNA for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 19/04/2002

ORAL JUDGEMENT

The petitioner, in this petition under Article 226 of the Constitution of India, has challenged the action of the respondent Corporation in not filling in the post of Electrical Supervisor by way of promotion and advertising the same as arbitrary and illegal. The petitioner has also sought for a declaration from this

Court to the effect that the action of the respondent Corporation in not promoting and/or appointing the petitioner to the post of Electrical Supervisor as arbitrary, illegal, null and void. The petitioner has further prayed for a permanent injunction against the respondent Corporation from implementing and acting upon the advertisement inviting applications for Electrical Supervisor amongst others and also restraining the respondent Corporation from conducting interviews from 24.4.91 and selecting as well as appointing any person to the post of Electrical Supervisor except the petitioner. The petitioner has also prayed for a mandatory direction directing the respondent Corporation to promote and/or appoint the petitioner to the post of Electrical Supervisor.

2. The petitioner has prayed for an interim relief against the respondent Corporation from acting and implementing upon the advertisement as issued by the respondent Corporation for the post of Electrical Supervisor amongst others and in conducting interviews from 24.4.91 and selecting and appointing any person to the post of Electrical Supervisor except the petitioner.

3. While issuing the notice, this Court has granted ad-interim relief on 24.4.91, restraining the respondents from making any appointment to the post of Electrical Supervisor pursuant to the advertisement till 1st May 1991. It was also clarified that Trade Test which was fixed to be held was to be continued. This Court has further made it clear that it was open to the petitioner to appear in the said Trade Test without prejudice to his contentions raised in the petition. The said ad-interim relief is continued thereafter till the matter was admitted on 11th December 1992. However, this Court has vacated the interim relief and passed the following order;

"Rule.

Heard the learned Counsel for the parties as regards interim relief. As and by way of interim relief it is further directed that the appointment in question to the post of Electrical Supervisor will be subject to the result of this petition. It shall be so stated in the order of appointment and the appointee will also be informed about the pendency of the petition. If the appointee so chooses, may apply for being joined as a respondent to this petition."

4. The brief facts, giving rise to the present petition, are that the petitioner has joined the respondent Corporation as a Liftman in the year 1973. The petitioner was promoted to the post of Pumpman in 1981 and then he was working as a Pumpman. The petitioner has submitted that he was working as Pumpman and the next higher post was that of Electrical Supervisor and the employees working as Pumpmen as well as Wiremen were promoted to the said post of Electrical Supervisor. The petitioner has also submitted that he was eligible and entitled to be promoted to the post of Electrical Supervisor and yet he was not promoted by the respondent Corporation. He has, thereafter, made a representation before the respondent Corporation on 19.9.90 as well as 21.9.91 which were not considered by the respondent Corporation.

5. The petitioner has further submitted that the respondent Corporation has issued an advertisement in the newspaper, inviting applications for the post of Electrical Supervisor amongst others. Pursuant to the said advertisement the petitioner has also applied for Electrical Supervisor and interviews were fixed on 16.2.91. However, the said interviews were cancelled and the petitioner was informed that the next date would be communicated to him. The petitioner has further submitted that fresh interviews were held on 24.4.91 and the petitioner appeared on that day. However, the petitioner was told that the respondent Corporation has taken decision to fill in the said post by way of direct recruitment.

6. Being aggrieved by the said decision, the petitioner has challenged the said action of the respondent Corporation before this Court. The petitioner has raised specific contentions in the petition that he was S.S.C. and he has also passed the Electrical Supervisor Certificate Examination with first class; that he has also passed PWD Wireman examination with second class; he has been working with the respondent Corporation for the last 18 years, and out of this period he has worked as Pumpman for more than 10 years; as against the requirement of minimum experience of 5 years, he was having experience of 10 years; and since the post of Electrical Supervisor was in the grade of Rs. 1200-2040 as per the I.G. Thakore Award the post was required to be filled-in by way of promotion. He has further submitted that instead of filling-in the post by promotion the respondent Corporation has decided to fill-in the said post by advertising the same and it was

therefore clearly in violation of the I.G. Thakore Industrial Award. The petitioner has also alleged malafide against the respondent Corporation as the respondent Corporation has decided to fill-in the said post by direct recruitment only with a view to favour certain persons. The petitioner has further submitted that the action of the respondent Corporation was against the principles of promissory estoppel as the petitioner was earlier assured that the giving of advertisement was merely a formality and the petitioner was to be appointed on the said post even after issuance of such advertisement.

7. On behalf of the respondent No.2 Superintendent, V.S. Hospital, Ahmedabad, affidavit-in-reply was filed opposing the petition, wherein it was stated that the petitioner was not entitled to be promoted to the post of Electrical Supervisor. It was further submitted that the petitioner was originally appointed as Lift-boy in the pay-scale of Rs. 196-232 and was confirmed in the said post with effect from 1.3.75. The Board of Management of the respondent No.2 passed a Resolution on 19.9.76 and increased the salary of Lift-man from Rs. 196-232 to Rs. 210-270. The petitioner was thereafter appointed as Pumpman on probation with effect from 1.1.79 and the said appointment was by way of direct selection and not by promotion. The petitioner was confirmed in the said post of Pumpman on 1-5-81. It was further submitted that the petitioner was at some time, asked to work as Wireman as the Wireman was on leave. Except this period, the petitioner was substantially working as a Pumpman and under the practice prevalent in the hospital, the promotion was given to the higher category of Pumpman. It was further stated in the affidavit-in-reply that in the past senior-most Pumpman was promoted as a Senior Pumpman. It was further stated that for the post of Electrical Supervisor, the applicant should hold PWD Electrical Supervisor's Certificate or I.T.I. (Electrical Trade Pass) and he should have minimum five years experience of maintenance of repairing, erection and running of electric starters, H.T. & L.T. electric equipments. It was stated in the affidavit-in-reply that the petitioner was not possessing the experience as Electrical Supervisor of 5 years and that the Pumpman could not get direct promotion to the post of Electrical Supervisor. The respondent No.2 has also made it clear that advertisement was published for direct selection of Electrician-Supervisor and hence there was no question of promotion as canvassed by the petitioner. The respondent No.2 has further stated that there was no bar for direct selection. The respondent No.2 has further submitted

that the instances quoted by the petitioner in the petition with regard to appointment of two persons, were purely by way of stopgap arrangement and that the said 2 persons were possessing necessary qualifications and experience for the post of Electrical Supervisor. The respondent No.2 has further submitted that the allegations made with regard to publication of advertisement are not tenable in view of the fact that the petitioner has not named any person and without joining the affected persons straightway vague allegations were made in the petition. It was further submitted that by giving the advertisement the Corporation has not done any harm to the citizens. On the contrary by giving such advertisement more avenues were made open for young, competent and energetic unemployed youths who can be brought in the Corporation. On the basis of the contentions urged and submissions made in the affidavit-in-reply, the respondents have submitted that the petition may be required to be rejected forthwith.

8. I have heard Mr. Manoj Shrimali for Mr. Girish Patel, learned advocate appearing on behalf of the petitioner, Mr. N.G. Nagarkar, ld. advocate appearing on behalf of respondent No.1 and Mr. B.P. Tanna, ld. Senior Advocate for respondent No.2. I have also gone through the pleadings of the parties and the documents attached with the petition as well as the affidavit-in-reply filed by the respondent No.2. During the course of arguments, Mr. Shrimali, ld. advocate appearing for the petitioner has placed before me a copy of I.G. Thakore's Award, Part III, wherein my attention was drawn to Para 2 which states that a person in the Light and Power Plant or in any other department who is required, according to the eligibility qualifications to possess the Second Class Wireman's Certificate and does possess such a certificate shall in no event be placed in the grade lower than Rs. 260-430, and that a person in the Light and Power Plant or in any other department who is required as per the eligibility qualifications to possess an Electrical Supervisor's Examination Certificate and possesses such a certificate shall in no event be placed in a grade lower than Rs. 330-560. On the basis of this Award, it was contended that the post of Electrical Supervisor must be filled-in on the basis of promotion and accordingly since the petitioner was holding the required qualification and experience he should be given promotion to the said post. It was also made clear in the said Award that the said directions would equally apply to all departments in the Corporation including Dairy, A.M.T.S., V.S. Hospital, School Board,

M.J. Library, etc. Mr. Shrimali, ld. advocate for the petitioner has further contended that since the post of Electrician-Supervisor was always filled in by promotion and as it was a consistent practice prevalent in the respondent-Corporation there should not be any deviation from the said policy. Lastly, he has submitted that since all the requisite criteria for the appointment of Electrician-Supervisor were fulfilled in the case of the petitioner, there was no reason to deny the said promotion to the petitioner.

9. As against the argument of Mr. Shrimali, ld. advocate for the petitioner, Mr. B.P. Tanna, ld. Senior Advocate appearing for respondent No.2 has submitted that Shri I.G. Thakore's Award, on which heavy reliance was placed by the petitioner, does not cover the issue involved in the petition and that it is nowhere stated in the said award that the post of Electrician-supervisor should be filled-in by promotion. It was further submitted that the petitioner was simply a Pumpman and from Pumpman he was to be promoted to Senior Pumpman. Moreover, the petitioner did not possess the required qualification or experience, and since the petitioner has appeared for interview it was not for him to challenge the validity of selection procedure adopted by the respondents. It was further submitted by him that the person appointed on this post is on probation for the last about 10 years and because of the pendency of the present petition the said person was not confirmed. In view of these facts and circumstances of the case, Mr. B.P. Tanna, ld. Senior Advocate has submitted that the petition be dismissed with costs. Mr. Nagarkar, ld. advocate appearing for the respondent No.1 has adopted the arguments of Mr. B.P. Tanna, ld. advocate for the respondent No.2.

10. I have given serious thoughts to the submissions made by both the parties, and I found much substance in the arguments made by Mr. Tanna, the ld. Senior Advocate for the respondent No.2. There was no infirmity in the selection procedure through advertisement adopted by the respondent Corporation. There is nothing on record which would show that the respondents have acted contrary to selection rules or in violation of established practice or procedure. Nothing is pointed out before me that there is any restriction in appointing a person on the post of Electrical-Supervisor by direct recruitment. From the record, it is not pointed that any favour was made to any person while adopting the procedure for selection of Electrician-Supervisor by advertisement and/or by direct recruitment. In absence

of any such Rules, a person cannot demand that a particular post should be filled-in by promotion only and not by direct recruitment. Since the petitioner is not having vested right in the post of Electrical Supervisor, I find no justification in the prayers made by the petitioner in this petition. The petition, therefore, fails. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]